

Bruce S. Bennett (SBN 105430)
Joshua M. Mester (SBN 194783)
James O. Johnston (SBN 167330)
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
Facsimile: (213) 243-2539
E-mail: bbennett@jonesday.com
jmester@jonesday.com
jjohnston@jonesday.com

Attorneys for PG&E Shareholders

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC COMPANY.

Debtors.

**Bankruptcy Case
No. 19-30088 (DM)**

Chapter 11 (Lead Case) (Jointly Administered)

**OBJECTION OF CERTAIN PG&E
SHAREHOLDERS TO MOTION OF
THE AD HOC COMMITTEE OF
UNSECURED NOTEHOLDERS FOR
RECONSIDERATION OF ORDERS
APPROVING TCC AND
SUBROGATION CLAIMANT RSAS;
JOINDER IN DEBTORS' OBJECTION**

Date: January 21, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 5241

- Affects PG&E Corporation
- Affects Pacific Gas and Electric Company
- Affects both Debtors

* All papers shall be filed in the Lead Case, No. 19-30088 (DM).

1 Certain owners of common stock of PG&E Corporation (the “PG&E Shareholders”)¹
2 hereby object to the *Motion Of The Ad Hoc Committee Of Senior Unsecured Noteholders For*
3 *Reconsideration And Relief From Orders Pursuant To Federal Rules Of Civil Procedure 59(e)*
4 *And 60(b)* [ECF 5241] (the “Motion”), by which the Ad Hoc Committee of Senior Unsecured
5 Noteholders (the “Bondholder Group”) requests that the Court vacate its orders approving the
6 TCC RSA and the Subro RSA.² The PG&E Shareholders join the Debtors’ objection to the
7 Motion and submit this Objection to highlight several important points.

8 **I. THE MOTION IS BASED ON A FALSE PREMISE**

9 The Bondholder Group says that the Court terminated exclusivity to promote competition
10 between the Debtors and the Bondholder Group, and it argues that the orders approving the RSAs
11 “short-circuit this competitive process.” Mot. ¶ 5. This is wrong twice over.

12 *First*, the Court terminated exclusivity because “the parties most deserving of
13 consideration, speaking through the TCC, have . . . spoken loudly and clearly that they want their
14 and the Senior Noteholders’ proposed plans to be considered.” [ECF 4167 at 2] Those parties –
15 the TCC and attorneys representing over seventy percent of the wildfire claimants – have now
16 made up their mind. They support the Debtors’ amended plan. As established by the TCC RSA,
17 they do not support the Bondholder Group’s plan, and the TCC has withdrawn as a sponsor of it.
18 [ECF 5177]

19 In terminating exclusivity, the Court noted that “[a] dual-track plan course going forward
20 may facilitate negotiations for a global resolution and narrow the issues which are in legitimate
21 dispute.” [ECF 4167 at 3] Far from being “undermined” as the Bondholder Group claims, Mot.
22 ¶ 6, that goal has been achieved. The mediated negotiations between the TCC, wildfire
23 claimants, Debtors and shareholders produced a global resolution. The Debtors’ plan is now

24 ¹ The PG&E Shareholders are the entities identified on Exhibit A to the *Fifth Amended Verified*
25 *Statement Of Jones Day Pursuant To Federal Rule Of Bankruptcy Procedure 2019*
26 [ECF 5142]. The PG&E Shareholders are acting in their individual capacities but authorized
27 the filing of this single submission for the purpose of administrative efficiency. Each of the
PG&E Shareholders is expressing its independent views, and counsel does not have the actual
or apparent authority to obligate any one entity to act in concert with any other entity with
respect to PG&E equity securities. The PG&E Shareholders have not agreed to act in concert
with respect to their respective interests in PG&E equity securities.

28 ² Capitalized terms not defined here have the meanings given in the Motion.

1 supported by overwhelming numbers of wildfire claimants, while the Bondholder Group's plan is
2 supported by no one but a constituency of unimpaired unsecured creditors who will be paid in
3 full, with postpetition interest, under the Debtors' plan.

4 The Bondholder Group has no remaining legitimate voice as to the future direction of this
5 case. But it condescendingly claims to know what's best for the TCC and its constituents,
6 asserting that "the TCC should never have been made to bear the burden" of the obligations it
7 voluntarily shouldered in the TCC RSA. Mot. ¶ 32. In terminating exclusivity, the Court
8 declined to "second-guess the informed decision" of the "well-counseled" TCC when it was
9 "willing to take the attendant risks that go with competing plan disputes." [ECF 4167 at 3] The
10 TCC's decision to settle similarly should not be second guessed.

11 *Second*, the Motion proceeds from the premise that termination of exclusivity guaranteed
12 that "wildfire victims [w]ould not be foreclosed from voting for more favorable plans that may be
13 proposed later on." Mot. ¶ 32. This too is wrong. When exclusivity is lifted, a party is
14 authorized to file a plan and attempt to build support for it. Exclusivity termination does not
15 disable others from building support for their own plan. As the Court recognized in approving the
16 RSAs here, a restructuring support agreement is an accepted device for developing a coalition of
17 plan support. Every RSA that coalesces support for one plan necessarily includes a critical
18 complement: the prohibition of support for a competing plan.

19 No authority supports the Bondholder Group's implicit premise that the termination of
20 exclusivity precludes a plan proponent from negotiating an RSA. Indeed, as a method for
21 negotiating and implementing consensus, RSAs are most useful and important after exclusivity
22 has been terminated. Without the ability to bind parties to support one plan and oppose another,
23 no deals would be struck in a bankruptcy case, as stakeholders would be free to re-trade and
24 renegotiate at will. That surely is not what the Court envisioned when it terminated exclusivity at
25 the request of the TCC and the wildfire claimants who now have agreed to support the Debtors'
26 plan.

1 **II. THERE IS NO NEW EVIDENCE**

2 Independently, the Bondholder Group has not satisfied its burden of proving that the
3 extraordinary remedy of reconsideration is warranted. “Motions for reconsideration must be
4 narrowly construed and the standard strictly applied to discourage litigants from making
5 repetitive arguments on issues that have been thoroughly considered by the court, to ensure
6 finality, and to prevent the practice of a losing party examining a decision and then plugging the
7 gaps of the lost motion with additional matters.” *Ackoff-Ortega v. Windswept Pac. Entm’t Co.*,
8 130 F. Supp. 2d 440, 443 (S.D.N.Y. 2000) (citations omitted); *United States v. Westlands Water*
9 *Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) (“A party seeking reconsideration must show
10 more than a disagreement with the Court’s decision, and recapitulation of the cases and
11 arguments considered by the court before rendering its original decision fails to carry the moving
12 party’s burden.”) (quotations and citations omitted).

13 In the Motion, the Bondholder Group does nothing more than reargue what it argued
14 previously – specifically, the alleged unfairness of “anticompetitive” provisions of the RSAs.
15 The law has not changed since the Court rejected that argument several weeks ago. And,
16 notwithstanding the Bondholder Group’s assertions to the contrary, there is no “newly discovered
17 evidence” or even “new factual developments” that otherwise might warrant reconsideration.

18 The Bondholder Group cites no “newly discovered evidence.” And the *only* “new
19 development” cited by the Bondholder Group is the Bondholder Group’s “newly disclosed plan.”
20 Mot. ¶ 28. In other words, the Bondholder Group says that the Court should vacate its prior
21 orders – to which it objected and against which it argued strenuously – because *the Bondholder*
22 *Group* decided to change *its own proposal* after its objections were overruled. Even if that “plan”
23 represented a *bona fide* alternative proposal for a restructuring (it does not), this development is
24 insufficient to warrant reconsideration of the Court’s prior orders as a matter of law.

25 In order to merit reconsideration of a motion, a litigant is “obliged to show not only that
26 [the] evidence was newly discovered or unknown to it until after the hearing, but also that it could
27 not with reasonable diligence have discovered and produced such evidence at the hearing.”
28 *Engelhard Indus., Inc. v. Research Instrumental Corp.*, 324 F.2d 347, 352 (9th Cir. 1963).

1 “Evidence is not new when the facts on which it is based had been in the moving party’s
2 possession since the start of the litigation.” *Rischer v. Banlavoura I, Inc.*, 376 F. App’x 778, 778
3 (9th Cir. 2010). Thus, for example, “the failure to file documents in an original motion or
4 opposition does not turn the late filed documents into ‘newly discovered evidence.’” *Sch. Dist.
5 No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also Frederick S. Wyle Prof. Corp.
6 v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985) (“as a matter of law . . . the trustee was not
7 entitled to reconsideration based on” alleged “new” evidence consisting of declarations of counsel
8 for plaintiff trustee and employees of debtor on whose behalf trustee acted); *Waltman v.
9 International Paper Co.*, 875 F.2d 468, 473-74 (5th Cir. 1989) (materials available at time of
10 initial decision will not be considered on motion for reconsideration).³

11 Here, the Bondholder Group’s “new” plan proposal is not new evidence. It is not
12 embodied in a plan filed with the Court. It is not supported by financing commitments. It does
13 not even specify the treatment of \$11 billion in wildfire subrogation claims. It can charitably be
14 described as ephemeral. Less charitably, it represents a bad faith effort to leverage a settlement
15 now that the TCC has withdrawn as the Bondholder Group’s co-plan proponent and the
16 Bondholder Group has failed in its effort to recover postpetition interest at rates greater than that
17 allowed by the Bankruptcy Code.

18 More importantly for purposes of the Motion, the Bondholder Group’s proposal was
19 entirely within its control at all times, and could have been made at any time before the Court
20 approved the RSAs. Indeed, the Bondholder Group unveiled its proposal (in the political arena,
21 not before the Court) *one day* after the Court entered its orders approving the RSAs. The Motion
22 cites no new evidence or developments other than the Bondholder Group’s own purported change
23 of heart. That is a woefully insufficient ground for the reconsideration the Bondholder Group
24 seeks.

25
26 ³ Similarly, evidence is not “new” when it could have been discovered with reasonable
27 diligence. *See, e.g., Yalter v. Endocare, Inc.*, No. CV 03-80 DOC (MLGx), 2008 U.S. Dist.
28 LEXIS 126930, at *6-7 (C.D. Cal. May 19, 2008) (reconsideration not warranted where there
was no indication that plaintiffs could not have discovered purportedly newly discovered e-mail
that served as basis for their motion).

1 **III. THE DEBTORS HAVE RELIED ON THE RSA APPROVAL ORDERS**

2 Finally, because the Debtors and other stakeholders have relied on the RSA approval
3 orders, reconsideration would be inappropriate even had the Bondholder Group proffered newly
4 discovered evidence. The “power to set aside its orders, while broad, is not unlimited.” *See*
5 *Matter of CADA Investments, Inc.*, 664 F.2d 1158, 1161-62 (9th Cir. 1981). Reconsideration is
6 available only where “rights ha[ve] not vested on faith of the order.” *Id.* Simply put,
7 “bankruptcy courts, as courts of equity, have the power to reconsider, modify or vacate their
8 previous orders *so long as no intervening rights have become vested in reliance* on the orders.”
9 *In re Lenox*, 902 F.2d 737, 739-40 (9th Cir. 1990) (emphasis added) (citations omitted); *In re*
10 *Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (the court “can modify or vacate its order so
11 long as no intervening right has become vested in reliance thereon.”).

12 A critical component of the RSAs approved by the Court was adjournment of the looming
13 Tubbs trial and estimation proceedings. At the Debtors’ request, the state court vacated the Tubbs
14 trial and Judge Donato took the estimation hearing dates off calendar after the Court entered the
15 RSA approval orders. As the Bondholder Group acknowledges, it is possible that those
16 proceedings will not be restarted in sufficient time to enable the Debtors to achieve plan
17 confirmation by the June 30, 2020, deadline established by AB 1054. Mot. ¶ 32 n.2 (“all future
18 hearing dates in both the district court estimation proceedings and state court Tubbs litigation
19 have been vacated, and Judge Donato has made clear that his calendar cannot accommodate
20 estimation until after June 30”). As a consequence, reconsideration and vacation of the RSA
21 approval orders – which would upend the global settlement among the Debtors, shareholders, the
22 TCC, the vast majority of wildfire claimants, and the wildfire subrogation claimants – might
23 imperil the entire reorganization.⁴

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26 ⁴ Another critical component of the TCC RSA was the requirement that the Debtors settle the
27 wildfire claims asserted by the eighteen individual preference plaintiffs who were granted
28 priority to pursue their Tubbs fire claims. After the Court approved the TCC RSA, the
Debtors reached settlements with all of those plaintiffs (and the thirty-two indispensable
parties associated with those plaintiffs). [ECF 5282] The Debtors would not have engaged in
piecemeal settlement with individual wildfire claimants absent approval of the TCC RSA.

1 Rights therefore have vested in reliance on the RSA approval orders, and reconsideration
2 of those orders could prejudice the Debtors (and all their stakeholders) who changed positions as
3 a result of the consummated RSAs. Given that reliance, the Court is without power to rescind
4 approval of the RSAs.

5 **IV. CONCLUSION**

6 There is no basis for reconsideration of the RSA approval orders. The PG&E
7 Shareholders request that the Court deny the Motion.

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9 Dated: January 14, 2020

JONES DAY

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11 By: /s/ James O. Johnston
12 James O. Johnston

13 *Attorneys for PG&E Shareholders*

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